

April 25, 2008

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-343

In Regard to the Matter of:

Bayside State Prison Opinion and Report
Litigation Of the
 Special Master

DAVID LOPEZ,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *
FRIDAY, APRIL 25, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

April 25, 2008

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Transcript of proceedings in the above

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matter taken by Theresa O. Mastroianni, Certified

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Court Reporter, license number 30X100085700, and

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Notary Public of the State of New Jersey at the

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United States District Court House, One Gerry Plaza,

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Camden, New Jersey, 08102, commencing at 9:30 AM.

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1 JUDGE BISSELL: We now reopen the case
2 of David Lopez.

3 The following constitutes the Special
4 Master's determination regarding the complaint of
5 David Lopez, docket number 08-343.

6 This opinion/report is being issued
7 pursuant to the directives of the Order of Reference
8 to a Special Master and the Special Master's
9 Agreement and the guiding principles of law which
10 underlie this decision to be applied to the facts
11 upon which it is based as set forth in the jury
12 instructions in the Walker and Mejias jury charges to
13 the extent applicable to the allegations of Mr.
14 Lopez's case.

15 As finalized after review under Local
16 Civil Rule 52.1, the transcript of this oral opinion
17 will constitute the written report required by
18 paragraph seven of the Order of Reference to a
19 Special Master.

20 Mr. Lopez was also a resident of
21 Trailer Number Three whose unit was searched on
22 August 2, 1997 with inmates removed from the
23 premises. He testified that he was pulled off his
24 bunk without any directions first to get up and then
25 also made a part of a pile of inmates four deep on

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1 the floor.

2 I might note this is consistent with
3 Mr. Watford's testimony that this is how this
4 particular SOG team chose to initiate the extractions
5 from the cubicles at the premises.

6 He testified that he was dragged out of
7 his bunk and banged down to the floor to begin with.
8 This may or may not have been the case, but as far as
9 the infliction of any serious injury from that event
10 is concerned, I find that the rest of his testimony,
11 frankly, is quite incredible and hence clouds the
12 accuracy and diminishes the weight of any testimony
13 that he was manhandled and injured in the manner in
14 which he was taken out of his bunk.

15 The testimony appears predominantly at
16 pages 19 through 24 and 27 through 28 of the
17 transcript of February 26th, 2008. I'm not going to
18 go into it in any great detail here other than to
19 note that these were very narrow hallways in the
20 trailer, barely more than room for a single person or
21 perhaps two to pass through side by side. And yet
22 Mr. Lopez testified that while being led from his
23 cubicle through the hallway into the dayroom along
24 this corridor there were SOG officers lined up on
25 both sides kicking, punching and hitting him.

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1 I determine, based upon the evidence
2 that's been brought out, particularly on this record
3 for this case, that that is physically impossible.
4 He was examined and cross-examined on this subject
5 and continued to insist that is what happened, that
6 there was this gauntlet in the hallway leading to the
7 cubicles, that there was another gauntlet in the day
8 room where he was then struck from persons on both
9 sides, some 70 total strikes he says in his testimony
10 on one occasion.

11 He also testified that as he was going
12 up the walkway he would be stopped periodically when
13 groups of SOG officers were in place and then beaten
14 again. This testimony also is not credible and it's
15 not at all consistent with other evidence that's come
16 before the Special Master here with regard to how the
17 gauntlet was constructed and how the prisoners moved
18 along it.

19 I find, frankly, that his
20 cross-examination punched considerable holes in his
21 description of the events that occurred to him and
22 also, as I said, there just is no inherent common
23 sense in his testimony about being beaten by two
24 lines of officers, particularly in the hallway
25 leading from the cubicles where there was

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1 not enough room for that.

2 I note also in connection with the
3 question of his having been dragged out of his bunk
4 and dropped on the floor, that in the course of
5 cross-examination it was revealed that in his
6 complaint, his answers to interrogatories and his
7 deposition did not include any description of that
8 particular event as a part of the SOG's assaultive
9 conduct.

10 In short, whatever happened to Mr.
11 Lopez didn't happen as he described it and with that
12 credibility destroyed and, therefore, no credible
13 evidence before me to support his version, or any
14 version, of what may have occurred to him, he has not
15 sustained his burden of proof in establishing Eighth
16 Amendment violations.

17 Finally, although not every item of
18 evidence has been discussed in this opinion/report,
19 all evidence presented to the Special Master was
20 reviewed and considered.

21 For reasons set forth above I recommend
22 in this report that the district court enter an order
23 and judgment of no cause for action with regard to
24 David Lopez.

25 Counsel, that concludes my decisions

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1 for today. Is there anything else to which we should
2 direct our attention before we adjourn?

3 MR. ROSELLI: I have nothing, your
4 Honor.

5 JUDGE BISSELL: Mr. Lindsay?

6 MR. LINDSAY: No.

7 JUDGE BISSELL: We're adjourned.

8 (Hearing Adjourned)

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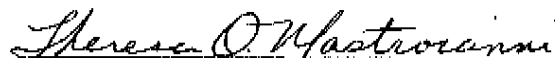
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I, Theresa O. Mastroianni, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.



Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. X10857

Date: April 29, 2008

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